REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CHEVRON HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 8790 & 8835

Members:

DEL ROSARIO, *P.J., Chairperson*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
JUL 10 2018 : 1:20 pm

x - x

RESOLUTION

MINDARO-GRULLA, J.:

For this Court's resolution are the following:

1. respondent's **Motion for Partial Reconsideration Re: Decision dated 18 January 2018**, filed on February 6, 2018, with petitioner's **Comment (Re: Respondent's Motion for Partial Reconsideration dated February 5, 2018)**, filed through registered mail on March 12, 2018 and received by this Court on March 19, 2018; and

2. petitioner's **Motion for Partial Reconsideration (Re: Decision dated January 18, 2018)**, filed through registered mail on February 6, 2018 and received by this Court on February 12, 2018, without respondent's comment despite notice as per Records Verification dated April 2, 2018.

Both parties seek reconsideration of the Court's Decision (assailed Decision)[1] promulgated on January 18, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the present Petition for Review in CTA Case No. 8790 is **DENIED** for lack of jurisdiction, while the Petition for Review in CTA Case No. 8835 is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱3,806,549.13, representing petitioner's excess and unutilized input VAT attributable to its zero-rated sales for the second quarter of calendar year 2012.
>
> **SO ORDERED.**"[2]

Respondent's Motion for Partial Reconsideration

Respondent moves for the partial reconsideration of the assailed Decision on the ground that the Court erred in ruling that petitioner's input taxes of ₱3,806,549.13 is attributable to the valid zero-rated receipts of ₱253,294,912.75.

Respondent maintains that petitioner has not sufficiently proven its entitlement to a refund or issuance of tax credit certificate in the amount of ₱3,806,549.13.

According to respondent, Section 112 of the National Internal Revenue Code (NIRC) of 1997 uses the word "directly attributable" and not the word "entirely attributable", thus, it was erroneous for the Court to assume that all input tax is directly attributable to petitioner's valid zero-rated sales without establishing how it factored in the production claim.

Respondent states further that the Court erred in ruling that petitioner has proven elements of a claim for unutilized input tax. Respondent alleges that there was no ruling that this unutilized input tax was "directly attributable" to the zero-rated sales. Respondent claims that it does not necessarily follow that when a taxpayer has

---

[1] Docket, vol. IV, pp. 3485-3530.
[2] Docket, vol. IV, p. 3530.

zero-rated sales, all its input tax is automatically directly attributable to such zero-rated sales.

On the other hand, petitioner argues respondent's allegation that it failed to establish the fact of "direct attributability" of its zero-rated receipts to its unutilized and excess input VAT has no basis in either fact or law.

Petitioner opines that Section 112(A) of the NIRC of 1997, as amended and Section 4.112-1, Revenue Regulation No. 16-2005 recognize that, for taxpayers who generate mixed sales, i.e., zero-rated sales or effectively zero-rated sales and taxable or exempt sales, the amount of creditable input tax due or paid cannot be directly and entirely attributed to specific transactions.

Moreover, petitioner alleges that this Court, in a number of cases, has ruled that in a VAT refund case, if the amount of creditable input tax cannot be directly and entirely attributed to zero-rated transactions, as when the taxpayer is engaged in both zero-rated or effectively zero-rated sales, as well as in taxable or exempt sale of goods or properties or services, the input tax shall be prorated among the taxpayer's zero-rated or effectively zero-rated sales, taxable sales, and exempt sales.

Finally, petitioner submits that contrary to respondent's allegation, the Supreme Court did not require proof of "direct attributability" in the case of *Atlas Consolidated Mining and Development vs. Commissioner of Internal Revenue*[3].

Respondent's Motion for Partial Reconsideration is bereft of merit.

Contrary to respondent's assertion, Section 112 of the NIRC of 1997, as amended, does not require that the input taxes subject of a claim refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law.[4] Moreover, where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or

[3] G.R. Nos. 141104 & 148763, June 8, 2007.
[4] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8905, October 19, 2017.

exempt sale of goods of properties or services, the provision allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales[5], to wit:

> "Sec. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid **attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That **where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales**: Provided, finally, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Clearly, when a taxpayer has zero-rated sales and has no taxable or exempt sales, the input tax due or paid will be directly and entirely attributed to such zero-rated sales.

As found in the assailed Decision, petitioner's excess input VAT is attributable to the entire zero-rated receipts, but only a portion of it was attributable to the valid zero-rated receipts, to wit:

---

[5] *CBK Power Company Limited vs. Commissioner of Internal Revenue,* CTA Case No. 7887, February 2, 2018.

"The total excess input VAT of ₱11,456,246.07 can be attributed to the entire zero-rated receipts declared by petitioner in the amount of ₱762,320,083.93; however, only the input VAT of ₱3,806,549.13 is attributable to the valid zero-rated receipts of ₱253,294,912.75, computed as follows:

Excess Input VAT	₱ 11,456,246.07
Multiply by Valid Zero-Rated Sales/Receipts	x 253,294,912.75
Divide by Total Declared Zero-Rated Sales/Receipts	÷ 762,320,083.93
Input VAT Attributable to Valid Zero-Rated Sales/Receipts	**₱ 3,806,549.13**

Considering the foregoing, the Court finds no merit in respondent's Motion for Partial Reconsideration.

Petitioner's Motion for Reconsideration

Petitioner moves for reconsideration of the assailed Decision insofar as (i) it denied its claim for refund or issuance of a TCC in CTA Case No. 8790 for lack of jurisdiction; (ii) disallowed a portion of petitioner's VAT zero-rated sales for failure to prove that its clients are non-resident foreign entities doing business abroad; (iii) deducted the amount of petitioner's output VAT liability for the 2nd quarter of CY 2012 from the allowable input VAT on the ground of failure to submit VAT invoices/official receipts to prove its input VAT carry-over from previous years.

Under CTA Case No. 8790, petitioner argues that the Court has jurisdiction over the claim for refund for the 1st quarter of CY 2012. While in CTA Case No. 8835, petitioner claims that it is entitled to the refund of its unutilized input VAT for the 2nd quarter of CY 2012 based on the following grounds:

1. Petitioner's clients are non-resident foreign corporations doing business outside the Philippines;

2. Petitioner sufficiently proved the existence of its reported input VAT carry-over from previous year;

L

3. Petitioner is entitled to the refund of input VAT supported by documents dated outside the quarter of claim but within the period of claim; and

4. Claims for refund of erroneously paid taxes, like any other ordinary civil case, necessitate only preponderance of evidence for its approbation.

Petitioner's Motion for Partial Reconsideration is bereft of merit.

In CTA Case No. 8790, the Court dismissed petitioner's claim for refund for lack of jurisdiction. The Court found that petitioner prematurely filed its Petition for Review on February 28, 2014, for failing to observe the 120-day prescriptive period provided for in Section 112(C) of the NIRC of 1997, as amended.

Petitioner claims that applying RMC No. 29-09, the running of the 120-day period commenced from the filing of the administrative claim for refund with supporting documents on October 31, 2013. However, it submits that the running of the 120-day period is suspended when it received the First Notice on February 7, 2014 which was a request for additional documents. Petitioner contends that the period commenced to run again on February 27, 2014 when it submitted the final batch of documents. Thus, according to petitioner, the 120-day period lapsed on March 20, 2014 and its Petition for Review was timely filed on March 28, 2014.

Moreover, petitioner argues that the ruling of the Supreme Court in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[6] does not apply in the present case. It contends that the counting of the 120-day period should not be counted from the final submission of documents but rather the applicable rule provided in RMC No. 29-09. Thus, it submits that it filed its judicial claim for refund or issuance of TCC for excess unutilized input VAT attributable to its zero-rated sales for the 1st quarter of CY 2012 within the period prescribed under Section 112(C) of the NIRC of 1997, as amended, as implemented by RMO No. 29-09.

"**SEC. 112. *Refunds or Tax Credits of Input Tax.* –**

---

[6] G.R. No. 207112, December 8, 2015.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the foregoing provision, the CIR has 120 days from the submission of supporting documents to decide the claim for refund. In case of full or partial denial, or inaction of the CIR, the taxpayer may file an appeal with the Court of Tax Appeals (CTA) within 30 days from receipt of the decision or from the lapse of the 120-day period. Compliance with both periods is jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal.[7]

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[8], the Supreme Court *En Banc* summarized the procedure for VAT refund claims filed prior to June 11, 2014, as in this case, to wit:

To summarize, for the just disposition of the subject controversy, the rule is that **from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR**. Then, upon filing by the taxpayer of his complete documents to support his application, or **expiration of the period given**, the CIR

---

[7] *Hedcor, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207575, July 15, 2015.
[8] G.R. No. 207112, December 8, 2015.

> has 120 days within which to decide the claim for tax credit or refund. **Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing**.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.
>
> It bears mentioning at this point that **the foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014**, such as the claim at bench." (*Emphasis supplied*)

To be sure, it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. Nevertheless, the Supreme Court also emphasized that the foregoing benefit given to taxpayer is not unbridled and, as such, is subject to limitations. Hence, based on the above-quoted portion of *Pilipinas Total Gas*, the filing of the complete supporting documents by the taxpayer in connection with an administrative claim for VAT refund is subject to the following rules:

1. Upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of processing unit.

2. If in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigation/processing unit.

L

Notice of the request for the submission of additional supporting documents is required.

3. It is only upon the submission of the documents by the taxpayer that the 120-day period would begin to run.

4. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the NIRC.

Considering that petitioner's administrative claim for refund was filed on October 31, 2013, the pronouncement in the case of *Pilipinas Total Gas, Inc.* is applicable.

In the assailed Decision, the Court found that after the filing of the administrative claim for refund, petitioner received a Letter of Authority dated November 28, 2013, with attached First Notice dated February 7, 2014, requiring petitioner to submit additional documents in support of its administrative claim for refund. Petitioner submitted several documents on February 17, 2014 (first batch) and on February 27, 2014 (final batch).

Applying the ruling in *Pilipinas Total Gas*, the counting of 120 days is commenced from February 27, 2014, the date when petitioner submitted the last batch of documents. Thus, respondent had until June 27, 2014, within which to grant or deny the claim.

However, petitioner filed its Petition for Review on March 28, 2014, well before the lapse of the 120-day period. Thus, it was proper for the Court to dismiss the Petition for Review in CTA Case No. 8790 for lack of jurisdiction.

On the other hand, in CTA Case No. 8835, the Court partially denied petitioner's claim for refund or issuance of a TCC for excess unutilized input VAT for the 2nd quarter of CY 2012.

The Court did not consider the Service Agreements executed between petitioner and some of its foreign clients as evidence to prove that the latter are non-resident foreign entities doing business outside the country. Petitioner, argues that the fact that the Service

Agreements show the addresses of petitioner's clients clearly proves that these entities are conducting business outside of the Philippines.

The Supreme Court in the case of *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*[9], held that that the **agreements with foreign clients are not sufficient to prove that such foreign clients are doing business outside the Philippines**, to wit:

> "In the same vein, Sitel fell short of proving that the recipients of its call services were foreign corporations doing business outside the Philippines. As correctly pointed out by the CTA Division, while Sitel's documentary evidence, which includes **Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients**, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said **documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines**."

Thus, it was proper for the Court to hold that the " the service agreements only indicate the names and addresses of petitioner's customers to whom it renders services but they do not establish that such customers are non-resident foreign corporations doing business outside the Philippines".

Moreover, petitioner submits that the Court erred in not giving probative value to the Screenshots of the Subsidiary Governance Website. It avers that these documents are not self-serving evidence, since self-serving evidence pertains to statements made outside of the Court or extra-record evidence where the opposing party was not given a chance to cross-examine or challenge its content.

This argument cannot be given credence. While Screenshots of the Subsidiary Governance Website cannot be considered "self-serving evidence" in the strict legal definition, it does not mean that

[9] G.R. No. 201326, February 8, 2017.

the Court erred in not giving them probative value. The information contained therein were retrieved from the database set-up and maintained by petitioner's group of companies. The said documents can therefore be easily manipulated to favor petitioner in view of its affinity with the entities that maintain or keep the said database.

In fact, petitioner admits that the website from which these documents were retrieved is for the exclusive use of the Chevron Group of Companies and access to it is limited to petitioner's employees and and its affiliates, to wit:

> "Petitioner respectfully submits that the Subgovern Website is a secured website containing the archive database of electronic documents which is for the exclusive use of the Chevron Group of Companies of which the Petitioner is an affiliate. Access to the Subgovern Website is limited to employees of Petitioner and its affiliates for use as reference data and other local regulatory purposes."[10]

Moreover, petitioner prays that the Court take judicial notice of other cases decided by other divisions of this Court which have factually recognized that a number of its foreign clients are in fact doing business outside the country.

It must be emphasized that the Court cannot take judicial notice of decisions in the other divisions. It bears stressing that the Court in Division is not bound by decisions or findings by another Division. Decisions of the Court of Tax Appeals (CTA) do not constitute precedents, and do not bind other courts or the public; that is why decisions of the Court in Division are appealable to the CTA *En Banc*, and the decisions of the latter are appealable to the Supreme Court, which may affirm, reverse or modify its decisions as the facts and the law may warrant. Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[11]

In addition, petitioner argues that it has sufficiently proved the existence of its reports input VAT carry-over from previous year. It

---

[10] Docket vol. IV, p. 3564.

[11] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, citing *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.

h

manifests that submission of VAT invoices/receipts to prove the existence of reported input VAT carry-over from the previous year is not a requirement to prove entitlement to a claim for refund.

Petitioner's argument is bereft of merit. An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[12]

Pursuant to Section 110(A)(1) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, any input VAT shall be creditable against the output VAT only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended.

Thus, it was proper for the Court to disallow the input VAT in the amount of ₱1,675,641.11 from petitioner's claim for non-compliance with the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-05.

Although it is true that this Court is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity petitioner's claims.[13]

Furthermore, petitioner argues that it is entitled to the refund of input VAT supported by documents dated outside the quarter of claim (out-of-period claims) but within the period of claim citing RMC No. 42-03.

The Court finds that the disallowance of the out-of-period claims in the total amount of ₱1,554,574.06 for failure to meet the substantiation requirements prescribed under the VAT law and regulations is in order.

---

[12] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015 citing *J.R.A. Philippines, Inc. v. CIR*, G.R. No. 171307, August 28, 2013.
[13] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.

L

Even if RMC No. 42-03 allows out-of-period claims of input VAT, the same cannot be adhered to, as it contravenes Section 110(A)(2) of the NIRC of 1997, as amended, to wit:

> "SEC. 110. *Tax Credits.*-
>
> (A) *Creditable Input Tax.* -
>
> xxx xxx xxx
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
>
> > (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
> >
> > (b)To the importer upon payment of the valueadded tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> xxx That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

It is clear from the foregoing provision that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty or fee, that is, upon the date of official receipt. Section 110 (A) is explicit – upon consummation, in the case of domestic purchases of goods, and upon payment, in the case of purchases of services. It does not provide any qualification.[14]

In *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*[15], the Supreme Court held that the taxpayer claiming a VAT input tax credit or refund has the burden of proving that he is

---

[14] *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, CTA EB Case Nos. 1297 & 1302, May 18, 2017.
[15] G.R. No. 180173, April 6, 2011.

entitled to the refund or credit by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded. The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases for goods or services attributable to zero-related sales.

Finally, there is no merit to petitioner's theory that claims for refund of erroneously paid taxes are in the nature of civil cases, therefore, only preponderance of evidence is required.

The ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Far East Bank & Trust Company,(Now Bank of the Philippine Islands)*[16], is instructive, to wit:

> "**The burden is on the taxpayer to prove its entitlement to the refund.**
>
> Moreover, **the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not ipso facto entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayers claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.**
>
> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.
>
> Hence, for failing to prove its entitlement to a tax refund, respondents claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer,

[16] G.R. No. 173854, March 15, 2010.

L

evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven." (*Emphasis supplied.*)

Moreover, substantial evidence has been construed to mean not necessarily preponderant proof as is required in ordinary civil action, but such kind of "relevant evidence as a reasonable man might accept as adequate in support of a conclusion."[17]

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision dated January 18, 2018.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration Re: Decision dated 18 January 2018**, and petitioner's **Motion for Partial Reconsideration (Re: Decision dated January 18, 2018)** are **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

---

[17] *Commissioner of Internal Revenue vs. Manila Machinery and Supply Company, et al.*, G.R. No. L-25653, February 28, 1985.